

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

IN RE

DOLORES AXELROD,

DEBTOR.

CHAPTER 7

CASE NO. 19-22225-rdd

JUDGE: Robert D. Drain

MOTION DATE: April 29, 2019

MOTION TIME: 10:00 AM

**AFFIRMATION IN SUPPORT OF
ENTRY OF AN ORDER GRANTING
RELIEF FROM THE AUTOMATIC STAY**

Nicole DiStasio, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Southern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Nationstar Mortgage LLC d/b/a Mr. Cooper as Servicer for U.S. Bank National Association, as Trustee for Harborview Mortgage Loan Trust 2005-13, Mortgage Loan Pass-Through Certificates, Series 2005-13 ("Movant"), a secured creditor of Dolores Axelrod ("Debtor"). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of the Debtor pursuant to a note executed by Dolores Axelrod on September 9, 2005, whereby Dolores Axelrod promised to repay the principal amount of \$600,000.00 plus interest to America's Wholesale Lender (the "Note"). To secure the repayment of the Note, Dolores Axelrod granted Mortgage Electronic Registration Systems, Inc., as nominee for America's Wholesale Lender a mortgage, which was duly recorded in the Westchester County Clerk's Office on November 28, 2005 in Control Number 453110017 (the "Mortgage," Note and Mortgage, collectively, as the "Loan"), encumbering real property located at 2 Shinnecock Court, Unit 2, Cortlandt Manor, NY 10567 (the "Property"). The Mortgage was transferred to U.S. Bank National Association, as Trustee for Harborview Mortgage Loan Trust 2005-13, Mortgage Loan Pass-Through Certificates, Series 2005-13, and said transfer was memorialized by an Assignment of Mortgage executed on May 3, 2018 and recorded May 10, 2018 in Control Number 581293498 (the "Assignment of Mortgage"). Copies of the Note, Mortgage, and Assignment of Mortgage are annexed hereto as **Exhibit "A"**.

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about February 8, 2019.

7. According to the Debtor's Statement of Intention, the Debtor intends to surrender the property. A copy of the Debtor's Chapter 7 Statement of Intentions is annexed hereto as **Exhibit "B"**

8. The Mortgage was in default on the day the Debtor filed this bankruptcy. Based upon said default, Movant initiated foreclosure proceedings in the Supreme Court of the State of New York, County of Westchester, under index number 57882/2018. Judgment of Foreclosure & Sale ("JFS") was entered December 28, 2018. Foreclosure sale was duly advertised in accordance

with said judgment, with a sale date scheduled for February 11, 2019. The filing of the instant bankruptcy stayed said sale. Annexed hereto as **Exhibit "C"** are copies of the Judgment of Foreclosure & Sale and Notice of Sale.

9. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the September 1, 2017 payment and each subsequent payment thereafter.

10. The amount of delinquency due as of February 13, 2019 under the Mortgage is as follows:

2 Defaulted Monthly Payments at \$3,192.43 each (September 2017 through October 2017)	\$6,384.86
12 Defaulted Monthly Payments at \$3,363.08 each (November 2017 through October 2018)	\$40,356.96
4 Defaulted Monthly Payments at \$3,564.96 each (November 2018 through February 2019)	\$14,259.84
Fees & Costs Due (Lump Sum)	<u>\$6,816.00</u>
Total Delinquencies	\$67,817.66

11. A copy of the Relief from Stay-Real Estate and Cooperative Apartments ("Affidavit") is annexed hereto as **Exhibit "D"**.

12. Moreover, in view of the total debt due to Movant and in light of the Debtor's failure to make payments, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

13. As set forth in the Affidavit, as of February 13, 2019, the approximate debt due and owing to Movant equals \$483,294.10. The debt is accruing interest at a rate of 5% per annum.

14. Based upon the Debtor's Schedule D, the Property has an estimated fair value of approximately \$610,000.00. A copy of Debtor's Schedule D is annexed hereto as **Exhibit "E"**. As indicated in paragraph 13 herein above, the total debt to Movant equals \$483,294.10.

15. Upon information and belief, according to the Debtor's Bankruptcy Petition, the following other encumbrances against the property exist: JPMorgan Chase Bank in the amount of \$76,000.00, see attached Schedule D. The total secured debt owed on the property is \$559,294.10.

16. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue and/or commence foreclosure proceedings with respect to the Property.

17. The Debtor, Debtor's Attorney, the Chapter 7 Trustee and the Office of the United States Trustee have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

18. No prior application has been made for the relief requested herein.

19. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to exercise its rights pursuant to the Note and Mortgage including but not limited to foreclose the Mortgage secured by the subject Property; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: February 27, 2019
Rochester, New York

/s/ Nicole DiStasio

Nicole DiStasio
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